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PLEASE REPLY TO NEW HAVEN

February 17, 2009

Senator Joseph J. Crisco, Jr.,
State Representative Steve Fontana
& Members of the Insurance and Real Estate Committee
Room 2800, Legislative Office Building
Hartford, CT 06106

Re: Opposition to SB-896
An Act Concerning The Repair of Damaged Motor Vehicles

Dear Senator Crisco, Representative Fontana and Members of the Committee:

I respectfully write in opposition to Senate Bill 896. The bill does not promote better consumer protections and would be a virtual nightmare to implement.

Section One

This proposed law contradicts the fundamental repairer-customer relationship and gives insurance companies enormous and heretofore unimagined rights to make collision repair decisions – decisions that substitute the rights of the customer or vehicle owner. The proposed changes are not only broadly anti-consumer, they are legally incongruent with existing laws governing the duties a repair shop owes to its customer.¹

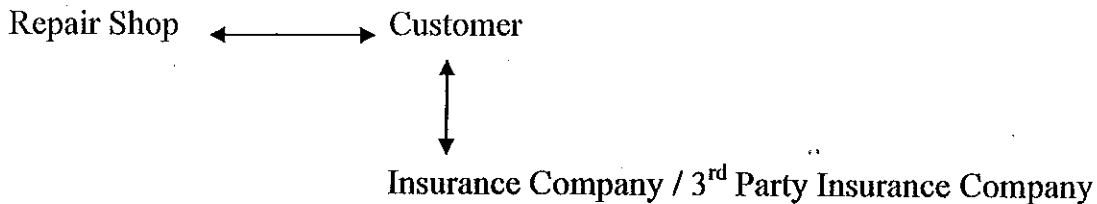
Section (c) (2), for example, requires repairers to give notice to insurers of supplemental repairs and the repairer cannot commence those repairs unless the insurer or insurer's representative has "approved such repairs." This is preposterous. An insurer's obligation is only to its insured, and that obligation is to indemnify its insured for his or her loss. This law would, in effect, give insurers (an unlicensed entity with no knowledge, training or experience in the craft of auto repairs) the final say on what repairs should be done to a vehicle. In other words, the insurance company would be empowered to contradict the judgment of a licensed repairer and the decision-making authority of the customer. Certainly, the legislature does not intend for such an absurd result.

¹ See, for example, General Statutes § 14-65f, which requires *customer* consent to perform repairs and *customer* consent to perform repairs that exceed the shop's initial estimate. See also General Statutes § 14-65g regarding *customer's* waiver of advance estimate; General Statutes § 14-65h regarding *customer's* right to retain replaced parts; General Statutes § 14-65i regarding repairer's duties to post a sign advising its *customer's* of their rights; and General Statutes § 14-65j regarding the charges a repair shop may assess to its *customer* and the information a repair shop must convey to its *customer* about the time it will take to perform repairs.

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This bill is attempting to revolutionize the relationship between a repair shop and its customer and the relationship between repair shops and insurance companies. It is imperative to recognize that a repair shop owes no duty to an insurance company. None. An insurance company has no legal right whatsoever to dictate how a vehicle should or should not be repaired. The customer is the only person empowered to make repair decisions after consultation with his or her licensed repairer. The customer may or may not have a right to seek indemnity pursuant to an insurance contract or through a third party loss claim.



If an insurer is unhappy with the cost of repairs, for example, it could simply refuse to pay for those repairs. If that were to happen, the repair shop would then need to seek payment from its customer. Absent an assignment of rights from its customer, the repair shop has no direct cause of action against the insurance company for the failure to pay on a given claim.

Any decision by an insurance company to refuse payment will be judged in accordance with the insurer's contractual obligations to its insured or its common law obligation to third party victims. Under no circumstance, however, does an insurer have any right to dictate to a licensed repair facility the manner or methods for which it should repair a vehicle. The insurer is not a party to the repair contract.

This proposed law would literally turn on its head the aforementioned legal duty structure in favor of disenfranchising consumers and giving insurers unlimited control over repair decisions.

The penalty provision (Section (c)(4)) is likewise overreaching and unsound. This provision preempts a repairer from seeking payment for its services, regardless of whether the payor is an insurer or third party, if the shop fails to comply with the aforesaid requirements. In other words, the repairer would be prohibited from seeking payment for services from anyone responsible for the same if the insurer does not authorize those repairs or approve of the way in which those repairs were done. This type of penalty is unreasonable and grossly unfair to repairers. It gives insurers an incredible amount of power and discretion, which they ought not have. Any such change to our law would likely mark the end of independent repair facilities. Again, this concept is fundamentally inconsistent with the basic principle that an insurer is not a party to the repair contract and thus, has no rights thereunder.

Section 2

Section 2 is likewise problematic as it reflects a mistaken understanding as to the duties a repair shop owes to an insurance company. Section 2 would require a repair shop to act as the insurer's agent by certifying under penalty of false statement that the customer has paid his or her deductible and that the repairs were made pursuant to the insurer's estimate. Again, this is unreasonable. The repair shop is not an agent of the insurance company. Moreover, a licensed repair facility should never be responsible to certify that it performed repairs consistent with the insurance company's estimate. Again, unlike a repair facility (which is licensed by the DMV), an insurance company is not licensed to repair vehicles.

Section 3

Section 3 seeks to modify our laws to require repair facilities to employ a licensed damage appraiser to "conduct all negotiates on behalf of [the] repair shop . . . with the insurer." There are two problems with this proposal. First, the repair shop owes no duty to negotiate with the insurer concerning the cost of repairs. Again, if the insurer chooses not to pay for the full cost of repairs, it can deny coverage or otherwise act in accordance with the terms of the insurance policy (or in the third party context, act in accordance with common law duties) and communicate that to its insured. Second, enacting a law that compels appraisers to negotiate on behalf of customers arguably violates Connecticut law prohibiting the unauthorized practice of law.² The practice of law as defined by our courts would perhaps encompass the proposed practice; i.e. retaining the services of an appraiser to negotiate a claim on behalf of a consumer, thus acting as that consumer's agent and fiduciary. As an attorney, I am not comfortable with this proposal or the various dangers associated with giving this kind of authority to damage appraisers.

² See General Statutes § 51-88 and State Bar Ass'n of Conn. v. Connecticut Bank & Trust Co., 145 Conn. 222, 233-34, 140 A.2d 863, 69 A.L.R.2d 394 (1958) holding that the unauthorized practice of law is not limited to simply appearing in court, but extends to any conduct that is "commonly understood to be the practice of law."

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Section 6

Section 6 requires repair shops to make vehicles available for inspection by the “insurer’s representative, who shall be a motor vehicle physical damage appraiser licensed under section 38a-790...” This proposal is antithetical. Under Connecticut Code of Ethics for Appraisers § 38a-790-8, every appraiser is required to:

“approach the appraisal of damaged property without prejudice against, or favoritism toward, any party involved [including insurance companies] . . . [and] disregard any efforts on the part of others [including insurance companies] to influence his judgment in the interest of the parties involved; [and] prepare an independent appraisal of damage.”

An appraiser could not maintain independence or disregard the opinions of the insurance company as the company’s representative. That would put appraisers in an untenable position.

For all of the foregoing reasons, I respectfully oppose SB-896. Thank you for your consideration.

Very truly yours,

John M. Parese

JMP/efk

cc: Robert Skrip, ABAC President

Connecticut Insurance Department

Glossary (Excerpts)

INDEMNIFICATION - Compensation to the victim of a loss, in whole or in part, by payment, repair, or replacement.

INDEMNITY - Legal principle that specifies an Insured should not collect more than the actual cash value of a loss but should be restored to approximately the same financial position that existed before the loss.

INSURANCE - An arrangement under which individuals, businesses, and other organizations or entities, in exchange for payment of a premium, are guaranteed compensation for losses resulting from certain perils under specified conditions.

INSURANCE COMPANY - (1) An organization chartered to operate as an insurer. (2) Any corporation primarily engaged in the business of furnishing insurance protection to individuals or organizations.

PROPERTY/CASUALTY (COMMERCIAL AND PERSONAL LINES) - Property insurance coverage for the direct or consequential loss of or damage to, property of every kind and Casualty insurance coverage resulting from legal liability, including that for death, injury, or disability, or damage to real or personal property.

PROPERTY DAMAGE COVERAGE - An agreement by an insurance carrier to protect an Insured against legal liability for damage by an insured automobile to the property of another.

REASONABLE AND CUSTOMARY CHARGE - The commonly charged or prevailing fees for health services in a specific geographic area. Indemnity plans generally provide coverage for services based on the reasonable and customary fees. In addition to any deductible or coinsurance amount, an enrollee would be responsible for paying the provider the difference between the billed charge and the reasonable and customary charge if the billed charge was higher.

DISCLAIMER

This page is a glossary of insurance terms and definitions that are commonly used in the insurance business. New terms may be added to the glossary over time. The definitions in this glossary are used with the permission of the David G. Sayles Insurance Services and the National Association of Insurance Commissioners. These definitions represent a common or general use of the term. Some words and/or phrases may be defined differently by other entities or used in a context such that the definition shown may not be applicable to your situation. Some of the terms may also have a special meaning as stated in your insurance policy. For this reason, you should read your insurance policy carefully.

